

Senate Local Govt. Comm.
Exhibit No. 15
American Civil Liberties Union
Date of Montana 3-14-2011
Bill No. HB 516
PO Box 1317
Helena, Montana 59624
406.443.8590
www.aclumontana.org

RE: HB 516 – Limiting local ordinances to state protected classes

Dear Chairman Sonju and members of the Senate Local Government Committee:

The American Civil Liberties Union of Montana strongly opposes HB 516. This bill raises serious federal and state constitutional concerns by repealing a validly enacted local ordinance, broadly and severely limiting local governments' ability to respond to local needs in the future, and singling out a group of Montanans for different treatment than others in the state. This bill creates a prohibition on local authority where one did not previously exist, unfairly changing the rules after the fact, and violating the concept of "shared powers" that exists under our state constitution.

HB 516 substantially undermines the balance of power shared between the state and local governments. As a general rule, local government units with self-government powers, such as the charter city of Missoula, may generally exercise any power not expressly prohibited by state law. Article XI, Sec. 6, of the Montana State Constitution allows any local government unit with a self-governing charter to exercise any power not prohibited by the constitution, state law or the city's charter. This provision grants a presumption to the people that they can govern themselves at the local level, unless expressly prohibited from doing so. *See also* MCA 7-1-101. This "shared powers" concept requires the legislature to clearly, expressly and specifically state that certain powers are denied to the local government. Furthermore, even in an area that is subject to state regulation, a **local government may still provide broader protections than those imposed by state law.** MCA 7-1-113 (2).

As discussed more thoroughly in the attached analysis that we provided to Rep. Hansen prior to her introduction of this bill, under Montana law, "the assumption is that local government possesses the power, unless it has been specifically denied." *American Cancer Society v. State*, 2004 MT 376, ¶9. In *American Cancer Society*, the State Supreme Court upheld the local ordinances of four charter cities that limited or prohibited smoking in buildings open to the public. At issue was a state

law that generally exempted casinos from local smoking ordinances. The court determined that the state law, while containing an exemption, did not prospectively forbid local governments from regulating smoking in casinos altogether. The court explained that if the Legislature wants to prohibit a local government from exercising a particular power, then it must do so expressly. *Id.* at ¶10

Montana is filled with examples of local governments responding to local desires by enacting ordinances that go beyond state law. In addition to the smoking ordinances discussed above, cities across the state have enacted ordinances to create new crimes for refusing a DUI test and using a cellular phone while driving, among others. Yet, HB 516 does not target any of these other ordinances that create a statutory and enforcement scheme outside of what the state law has provided, indicating that uniformity is not the only purpose behind this bill. In fact, if uniformity was all that was desired, then the bill could simply require local governments to use the existing enforcement scheme (i.e., contract with the state human right bureau for investigation and refer cases to the district court), rather than strip local governments of their constitutional authority to enact regulations entirely.

Instead, HB 516 goes much further, and unconstitutionally interferes with local control by broadly prohibiting local actions, without furthering a legitimate state interest. First, the bill would retroactively prohibit any local ordinance, resolution, or policy that included a class of people not recognized in the MHRA. Such policies would include the internal hiring and employee benefit practices of cities across the state, and may include school anti-bullying policies¹ that include students who are not included in the MHRA.

Many of these employment policies were enacted in order to comply with the holding of *Snetsinger v. State*, 2004 MT 390, which held that the state must treat same-sex couples on the same basis as unmarried opposite sex couples for the purposes of employee benefits. HB 516 would now put local governments in the untenable position of having to decide between complying with the court or with this bill.

Furthermore, **this bill says that what is good for the state is not good enough for local governments.** The state already has an employment policy that recognizes protections beyond the MHRA. Administrative Rules of Montana 2.21.4005.²

¹ The term "local government" is not defined in the bill or the MHRA, so in addition to cities, towns and counties, the bill might also apply to school districts.

² 2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY

The state's policy even notes that the enforcement mechanism varies for some of the protections afforded by it. If this variation is good enough for the state's policy, it should not be used as an argument to strike down a local government's policies.

Additionally, the bill's use of the term "protected classes" is unclear. That phrase is not used anywhere else in the Montana Code, much less defined in the MHRA. While the MHRA contains a list of characteristics that may not be used to discriminate, the Act also allows for certain benefits for other people, including veterans. It is unclear how this bill's prohibition on additional "protected classes" would impact local nondiscrimination provisions or hiring preferences for veterans and others.

The due process clause of the Montana constitution requires that a statute enacted under the state's police power must be reasonably related to a permissible legislative objective. *See, e.g., State v. Egdorf*, 2003 MT 264. Here, HB 516 arbitrarily takes away from individuals the right to participate and govern at the local level as encouraged in the "shared powers" concept of local government law.

Furthermore, the bill possibly violates the equal protection provisions of the federal constitution. In the case of *Romer v. Evans*, 517 U.S. 620 (1996), the United States Supreme Court struck down a constitutional amendment enacted in Colorado that similarly sought to restrict the ability of local governments to provide protections to members of the LGBT community. Colorado's Amendment 2 precluded all legislative, executive, judicial action at any level of state or local government designed to protect a person based on their sexual orientation.

The main constitutional infirmity of the amendment at issue in *Romer* was that it expressly targeted a specific group of individuals and imposed a "broad disability upon those individuals and no others" to seek legal protections against discrimination. The Court held that the amendment imposed a "broad and

(1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation.

undifferentiated disability on a single named group” through invalid legislation and that the measure’s sheer breadth was so “discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but an animus toward the class it affects; it lacks a rational relationship to legitimate state interests.”

The Court further stated that a “law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in its most literal sense.” “[G]overnment and each of its parts [must] remain open on impartial terms to all who seek assistance.”

HB 516 is similar to the amendment struck down in *Romer*, in that is a clear attempt to prohibit local protections for members of the LGBT community. The sponsor and the proponents focused almost exclusively on their desire to repeal Missoula Ordinance Number 3428, enacted in April 2010, which provides nondiscrimination protections on several bases, including sexual orientation. While the sponsor professes that this bill is merely an attempt to provide uniformity in the creation and enforcement of discrimination law, the history of the bill and the proponents’ testimony prove otherwise.

This bill arose only after the City of Missoula responded to a local need to address discrimination against LGBT community members – a need that the state has consistently refused to meet. As the committee heard during public testimony on this bill, many opponents to the Missoula ordinance frequently engage in personal attacks against LGBT individuals and adamantly oppose any attempt to include sexual orientation in discrimination protections. HB 516 is rooted in the same animus observed by the Court in *Romer*, and like Colorado’s Amendment 2, unconstitutionally singles out the LGBT community for unequal treatment by repealing Missoula’s ordinance.

We respectfully urge you to reject this attempt to eviscerate local control, strip LGBT Montanans of existing local protections, and deny local governments the ability to respond to local needs. Please vote “no” on HB 516.

Submitted by:
Niki Zupanic
Public Policy Director
ACLU of Montana

Niki Zupanic

From: niki zupanic [niki.zupanic@gmail.com]
Sent: Friday, February 11, 2011 11:45 AM
To: krishansen33@gmail.com
Cc: Niki Zupanic
Subject: LC 1865 creating state preemption

Dear Rep. Hansen,

Thank you for your time this morning and for the opportunity to share our preemption analysis with you. As I mentioned, before we drafted the Missoula ordinance, we researched the limits of a self governing charter city's local authority to prohibit discrimination based upon sexual orientation and gender identity in the areas of employment, housing, public accommodations, and education. Specifically, we looked into the concern that state law prohibits local governments from regulating in the areas of employment, rental housing, or public education, or that the Montana Human Rights Act (MHRA) would bar local governments from enacting non-discrimination provisions that are different from the MHRA's. Based upon our reading of case law and statute, we feel confident that the Missoula ordinance is not currently preempted by state law.

As a general rule, local government units with self-government powers, such as the charter city of Missoula, may generally exercise any power not expressly prohibited by state law. Article XI, Sec. 6, of the Montana State Constitution allows any local government unit with a self-governing charter to exercise any power not prohibited by the constitution, state law or the city's charter. *See also* MCA 7-1-101. Missoula is a local government unit with self-government powers, as it operates under a self-government city charter that was adopted pursuant to Article XI, Section 5, of the Montana State Constitution.

Under Montana law, "the assumption is that local government possesses the power, unless it has been specifically denied." *American Cancer Society v. State*, 2004 MT 376, ¶9. In *American Cancer Society*, the State Supreme Court upheld the local ordinances of four charter cities that limited or prohibited smoking in buildings open to the public. At issue was a state law that generally exempted casinos from local smoking ordinances. The court determined that the state law, while containing an exemption, did not prospectively forbid local governments from regulating smoking in casinos altogether. The court explained that if the Legislature wants to prohibit a local government from exercising a particular power, then it must do so expressly. *Id.* at ¶10

The court in *American Cancer Society* goes on to give two examples of the type of express prohibition upon local government power that is required (and that it found lacking in that case): (1) express prohibitory language contained in a state statute, such as MCA 7-1-111, or (2) a direct inconsistency between a state statute and a local ordinance. *Id.* at ¶14. Regarding the first type of preemption ("express prohibitory language"), the court notes that the Legislature has delineated fourteen powers that self-governing cities may not exercise (per MCA 7-1-111), and another five that a city may exercise only if the state law specifically delegates that power to the city (per MCA 7-1-112). *Id.* at ¶16. It is important to note, however, that local ordinances that incidentally touch upon a forbidden subject do not necessarily constitute impermissible direct regulation of the forbidden subject. For example, as the *American Cancer Society* court explains, local ordinances limiting indoor smoking may incidentally impact casinos, but that does not mean that the local ordinances impermissibly regulate casinos themselves. *Id.* at ¶17.

The second type of preemption (a "direct inconsistency") exists when a local ordinance adopts lower or less stringent standards in an area that is "affirmatively subjected" to state law or regulation. MCA 7-1-113. As an example of a direct inconsistency, the court cited to a case holding that a city may not ignore a state statute that requires the city to present charges against a suspended firefighter to the entire city council for a hearing. *Id.*, citing *Billings Firefighters Local 521 v. City of Billings*, 1999 MT 6. In this second type of preemption, the state statute sets a floor, and a local authority may not adopt an ordinance that sets a lower standard than what is required by state law.

Applying these preemption rules to the Missoula ordinance, we find no express prohibitory language (and, in fact, the ordinance was drafted to avoid express prohibitions in current law) that would bar the ordinance's provisions, and we find

no direct inconsistency, since the ordinance does not relax or lower the non-discrimination provisions found in the MHRA.

Regarding express prohibitory language, there is currently no express prohibitory language contained in the MHRA (as you know, your LC 1865 would place such an express prohibition in the MHRA). As far as the exclusive remedy and exhaustion requirements of the MHRA, they only apply to violations of the MHRA or a private right of action to enforce the equal protection provisions of our state constitution. The local ordinance is creating a separate scheme, with its own violations, enforcement mechanism, and remedy, thereby not implicating the MHRA or state constitution. Similar to the state law at issue in *American Cancer Society*, the exhaustion requirement of the MHRA does not strip a local government of its power to regulate and prohibit discriminatory acts within its jurisdiction.

Additionally, the ordinance was drafted to avoid conflict with the express prohibitions found in MCA 7-1-111. For example, the prohibition in MCA 7-1-111 (2) that denies local governments from exercising a power that affects Title 39, would not extend to employment discrimination, including hiring and firing decisions, which is not expressly covered by Title 39. Title 39 limits itself to only certain aspects of the employment relationship and specifically defers to the MHRA to address acts of discrimination in the hiring and firing of employees. Therefore, a local government that regulates such discriminatory acts (as Missoula does in its ordinance) is not violating MCA 7-1-111 (2).

The Missoula ordinance also does not violate MCA 7-1-111 (13), which restricts the ability of local governments to regulate the activities of landlords. This subparagraph provides that a local government may require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences in the city. In other words, while a city may not single out landlords and subject them to special regulations, a landlord must still comply with other city ordinances that generally apply to businesses and residences. Accordingly, the Missoula ordinance was drafted to regulate housing and/or real estate transactions broadly, and does not single out rental housing, by prohibiting discrimination in any real estate transaction, including sales, leases, rentals, and other transfers of both residential and commercial property.

I hope that this brief analysis is helpful to you as you decide whether or not to introduce LC 1865. Far from simply clarifying existing law regarding preemption in this arena, your bill would create an affirmative prohibition where one does not exist.

We feel strongly that the Missoula has taken a positive step in protecting its residents from unfair discrimination, and that the ability of cities and towns to enact such protections should be preserved.

Thank you for your consideration of this information. If you have any questions or concerns, please do not hesitate to contact me. I can be reached at this email address, at nikiz@aclumontana.org, or by cell phone at 406.461.5178. Please call or email at any time.

Best,
Niki

Niki Zupanic, Public Policy Director

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Kalispell Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Chapter 5A CIVIL RIGHTS](#)**5A-3 Discriminatory Practices.**

Without limitation, the following are declared to be discrimination:

- A. Employer: For an employer, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.
- B. Employment Agency: For an employment agency, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to accord adverse, unlawful or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.
- C. Labor Organization: For any labor organization, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend or otherwise discipline a member; or to accord adverse, unlawful or unequal treatment to any person with respect to his or her hiring, apprenticeship, training, tenure, compensation, upgrading, layoff or any term or condition of employment.
- D. Persons Transferring Real Property: For any person, having any interest in real property and any real estate broker or real estate agent, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to fail or refuse to sell, rent, assign, or otherwise transfer any real property to any other person, or to accord adverse, unlawful, or unequal treatment to any person with respect to the acquisition, occupancy, use, and enjoyment of any real property.
- E. Persons Engaged in Public Accommodations: For any person engaged in the provision of public accommodations, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to fail or refuse to provide to any person access to the use of and benefit from the services and facilities of such public accommodations; or to accord adverse, unlawful, or unequal treatment to any person with respect to the availability of such services and facilities, the price or other consideration therefor, the scope and quality thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation, and repair.
- F. Persons Engaged in Public Services: For any person engaged in the provision of public services, by reason of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to fail or refuse to provide to any person access to the use and benefit thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation, and repair.
- G. Any Person Concealing or Aiding in Discrimination: For any person, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap, to conceal or attempt to conceal any unlawful discrimination or to aid, abet, compel, coerce, incite or induce, or attempt to induce, another person to discriminate, or by any means, trick, artifice, advertisement or sign, or use any form of application, or make any record or inquiry, or device whatsoever to bring about or facilitate discrimination, or to engage in or threaten to engage in any reprisal, economic or otherwise, against any person by reason of the latter's filing a complaint, testifying or assisting in the observance and support of

the purposes and provisions of this chapter.

H. Financial Institutions: For any person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of any real property or any agent or employee thereof, to discriminate against any person or group of persons, because of race, age, color, sex, creed, religion, marital status, ancestry, national origin or physical or mental handicap of such person or group of persons or of the prospective occupants or tenants of such real property in the granting, withholding, extending, modifying, renewing, or in the rates, terms, conditions, the extension of services in connection therewith.

I. Exempt Religious Organizations: Wherever religious organizations or bodies are exempt from any of the provisions of this chapter, such exemption shall apply only to religious qualifications for employment or residence in church owned or operated property, and such organizations shall not be exempt from any provisions of this chapter relating to discrimination based upon race, age, color, sex, ancestry, national origin or physical or mental handicap. (Ord. 1116 § 3)



COMMISSION RESOLUTION NO. 4243

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA DECLARING IT TO BE THE POLICY OF THE CITY OF BOZEMAN THAT THE CITY WILL NOT DISCRIMINATE IN EMPLOYMENT AND BENEFITS ON THE BASIS OF SEXUAL ORIENTATION AND/OR GENDER IDENTITY.

WHEREAS, in November, 2009, the City of Bozeman passed and adopted Commission Resolution Number 4217 declaring "All are welcome here", and committing to 1) support the diversity of the community, 2) promote inclusiveness in our public endeavors and private actions; and 3) work to end silence and stop the spread of hate, and in so doing build just and caring communities, congregations, workplaces, schools and homes; and

WHEREAS, the City's current employment practices do not discriminate on the basis of actual or perceived sexual orientation or gender identity but the City has yet to formally adopt a policy stating such;

WHEREAS, currently, individuals who have experienced discrimination based on actual or perceived sexual orientation or gender identity have no access to remedies or procedures under federal or state employment laws;

WHEREAS, Congress is considering the Employment Non-Discrimination Act (EDNA) of 2009, whose purposes include:

- (1) To address the history and widespread pattern of irrational discrimination on the basis of actual or perceived sexual orientation or gender identity by private sector employers and local, state and federal government employers; and to

- (2) Provide meaningful and effective remedies for employment discrimination on the basis of actual or perceived sexual orientation or gender identity.

WHEREAS, EDNA would make it an unlawful employment practice for an employer to:

- (1) refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or to
- (2) limit, segregate, or classify employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

WHEREAS, on January 11, 2010, the Bozeman City Commission directed staff to develop policies and implementation strategies to prohibit discrimination in City employment, benefits and programs and services on the basis of actual or perceived sexual orientation or gender identity;

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Bozeman, Montana:

Section 1

Definitions: For purposes of this Resolution:

- The term 'sexual orientation' means homosexuality, heterosexuality, or bisexuality.
- The term 'gender identity' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

Section 2

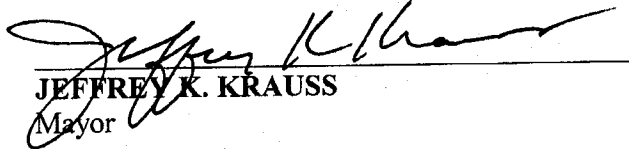
Actions to be taken:

- The City will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, political ideas, or perceived or actual disability, sexual

orientation or gender identity in the development or implementation of any City program, service, or function;

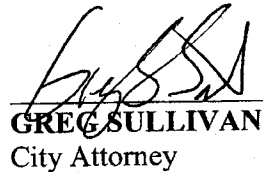
- The City's Anti-Discrimination Policy Statement will be expanded to prohibit discrimination based on actual or perceived sexual orientation or gender identity (Attachment A-1);
- The Employment Anti-Discrimination Policy Statement found in Section II of the City of Bozeman Employee Handbook and the General Policy statement found in Section IV, Recruitment and Selection Procedures of the City of Bozeman Employee Handbook will be amended to prohibit discrimination based on actual or perceived sexual orientation or gender identity. (Attachment A-2);
- The Employee Benefits policy found in Section VII of the City of Bozeman's Employee Handbook will be revised to formally include same sex and opposite sex domestic partners as 'eligible dependents' and therefore entitled to coverage under the City's health insurance program. (Attachment A-3). The City will also create the Affidavit of Domestic Partnership, which is required by the City's insurance carrier for the City to offer domestic partner benefits;
- The City will develop a complaint procedure similar to City's Sexual Harassment complaint procedure providing for the reporting and resolution of allegations of discrimination based on actual or perceived sexual orientation or gender identity;
- The City's anti-harassment training program will be expanded to include the prohibition of discrimination on the basis of actual or perceived sexual orientation or gender identity;
- The City will ask their insurance administrator to conduct an audit with the purpose of ensuring that all covered participants are eligible for coverage under the City's health insurance policy and if this is not possible the City will conduct a self-audit to ensure all participants are eligible under the program;
- City staff will research the feasibility, costs and tax consequences of providing COBRA-type benefits to domestic partners and will report back to the Commission before the open enrollment period of May/June 2010.

Passed and adopted this 8th day of February, 2010.


JEFFREY K. KRAUSS
Mayor



APPROVED AS TO FORM:


GREG SULLIVAN
City Attorney

Attachments:

- A-1: City of Bozeman Employment Anti-Discrimination Policy
- A-2: City of Bozeman Employee Handbook Anti-Discrimination Provisions
- A-3: City of Bozeman Employee Handbook, Section VIII, Employee Benefits



ADMINISTRATIVE ORDER NO. 2010-03

Adoption of Updated Bozeman Municipal Code Title 2, Chapter 2.01 and Adoption of Expanded Anti-Discrimination Policy and Related Handbook Policies

A. On May 11, 2009, the Bozeman City Commission adopted Ordinance 1759, which addressed:

- Finance Disclosure Requirements;
- Post-Employment Activities; and
- Board of Ethics

This was Ordinance was effective June 10, 2009.

On December 28, 2009, upon the recommendation of the City Board of Ethics, the Commission adopted Ordinance 1775 which addressed and defined "Improper Governmental Action" including retaliation by employees and officials against those who report alleged improper governmental action. This Ordinance was effective January 27, 2010.

Combined, these actions significantly modified Title 2, Chapter 2.01, Code of Ethics, of the Bozeman Municipal Code (BMC). **The revised BMC Chapter 2.01, Code of Ethics is hereby adopted. By adopting this Administrative Order, Appendix A of the Employee Handbook is amended in its entirety and is replaced with the new Code of Ethics (Attachment A, pages 3 through 19).**

B. On February 8, 2010, the Bozeman City Commission adopted Resolution 4243 which expanded the City's non-discrimination policy to prohibit discrimination on the basis of actual or perceived gender identity or sexual orientation in employment or in the provision of services. This Resolution was effective immediately.

The implementation of Resolution 4243 requires the modification of the following sections of the City of Bozeman Employee Handbook:

- Section II. Employment Policies, Anti-Discrimination Policy;
- Section IV, Recruitment and Selection, General Policy; and
- Section VIII, Employee Benefits

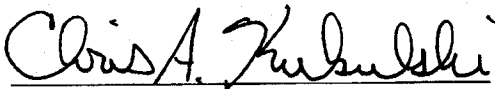
Specifically, Handbook Sections II and IV have been modified to prohibit discrimination on the basis of actual or perceived sexual orientation or gender identify, and Handbook Section VII has been modified to: 1) address health-related and life-related benefits separately, and 2) reflect City policy on the enrollment of domestic partners, regardless of

gender, in the City's Health/Dental/Vision/Prescription insurance program. **The revised Sections II, IV and VIII are hereby adopted and are included as Attachment B (pages 20 through 22) to this Administrative Order.**

Every employee will receive a copy of this Administrative Order. Questions related to the updated Code of Ethics should be directed to the City Attorney or City Clerk; questions related to the changes in the Sections II, IV and VIII of the Employee Handbook should be directed to Human Resources.

This Administrative Order is effective immediately.

DATED this 8 day of March, 2010.


CHRIS A. KUKULSKI
City Manager

Attachment B:

Updated City of Bozeman Employee Handbook Provisions Resulting from the Adoption of Resolution 4243

Section II. Employment Policies

Effective Date: 7/1/97

Revision Date: 3/1/2010

Employment Anti-Discrimination Policies

The City of Bozeman does not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, age, marital status, national origin, political ideas, or on the basis of perceived or actual disability, sexual orientation or gender identity. This relates to all aspects of employment, and to the use of all facilities and participation in all City-sponsored activities. This policy does not preclude discrimination based on bona fide occupational qualifications or other recognized exceptions under the law.

As an employee of the City of Bozeman, you are entitled to work in an environment free of discrimination. Racial, sexual or ethnic remarks or slurs and other forms of harassment are not tolerated. If you feel you have been treated unfairly, notify your Supervisor, the Human Resources Director, or both. There are procedures available to address your concerns. The very nature of harassment makes it impossible to detect unless the person being harassed promptly reports it.

Each supervisor of the City supports and encourages the City's anti-discrimination policies and attempts to be aware of, and take appropriate steps to correct, any improper employee actions. The Human Resources Department is responsible for administering this policy.

Section IV. Recruitment and Selection

Effective Date: 7/1/97

Revision Date: 3/1/2010

General Policy

Under the direction of the City Commission, the City Manager has the authority to hire, discipline, manage and fire City personnel. The City Manager may, in turn, delegate this responsibility to the City's Department Heads and Supervisors. In cooperation with the Department Heads and Supervisors, the Human Resources Department administers and coordinates the hiring process for all position vacancies.

The City's recruitment and selection procedures are designed to make sure all applicants are treated equally and without regard to race, color, religion, creed, sex, age, marital status, national origin, political ideas or actual or perceived disability, sexual orientation or gender identify. The process for filling vacant or new positions is summarized below. Refer to your collective bargaining agreement for further information.

Section VIII. Employee Benefits

Effective Date: 7/1/97

Revision Date: 3/1/2010

Employee benefits are provided to employees based on the availability of funds. The City's benefit package may be changed at any time. All employees affected by any change, whether it increases or decreases the benefits, may receive a notice of the change. A brief description of employee benefits follows. You should refer to your collective bargaining agreement, or contact the Human Resources Department, for more information.

Medical, Dental, Vision and Prescription Benefits

The City makes medical, dental, vision, and prescription insurance benefits available for its employees, retirees and dependents as provided for in the most recent version of the Montana Municipal Interlocal Authority's Plan Document/Summary Plan Description for the City of Bozeman.

In addition to the list of dependents identified in the MMIA Plan Document who meet the "Required Eligibility Conditions", an eligible employee or retiree may enroll a Domestic Partner, regardless of gender, if that Domestic Partner is named in an Affidavit of Domestic Partnership that meets the criteria established in the Affidavit and is approved by the Human Resources Director.

A "Domestic Partner" means a person who meets the following criteria:

1. Neither partner is or has been for the past six months, married, legally separated, a cohabiter or a Domestic Partner to another;
2. The partners have cohabitated for at least six months and continue to cohabit;
3. The partners are at least 18 years of age and mentally competent to consent to contract and mentally competent to execute the required Affidavit;
4. The partners are not related by blood to a degree that would bar marriage in the State of Montana;
5. The partners are each other's sole Domestic Partner and intend to remain so indefinitely; and
6. The partners are responsible for each other's common welfare and have a financial interdependent relationship evidenced by any of the following:
 - a. Mutually granted financial or health care powers of attorney;
 - b. Designation of each other as primary beneficiary in wills, life insurance policies or retirement plans;
 - c. Executed a joint lease, mortgage or deed; or
 - d. Have joint ownership of a banking account.

Enrollment and coverage information is available through the Human Resources Department, and is provided to all eligible employees at orientation. Employees terminating their employment, and those who are undergoing a reduction in hours, or entering a Leave Without Pay status, should also contact Human Resources to learn about extending their health, dental, vision and prescription insurance coverage.

Employees are required to notify Human Resources, in writing, of any changes in dependent status, such as separation or dissolution in a marriage, events which indicate an employee's domestic partnership is no longer valid, or birth or adoption of a dependent, within fifteen (15) working days of the date the change occurs. Failure to do so may result in disciplinary action.

Life and Accidental Death/Dismemberment Benefits

The City currently provides a \$10,000 term life/accidental death/dismemberment policy for every City employee who is scheduled to work more than 20 hours per week on a year round basis. Spouse and dependent coverage is also provided. Employees may purchase additional levels of coverage through payroll withholding. For coverage and cost information, contact Human Resources.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY

(1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ) . The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC) . Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.